

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LEO BOYKINS, III

Petitioner, : Case No. 3:14-cv-255

- vs -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

ERIC D. WILSON, Warden,

:  
Respondent.

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**REPORT AND RECOMMENDATIONS**

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Petitioner Leo Boykins, III, brought this habeas corpus action *pro se* pursuant to 28 U.S.C. § 2241 to obtain relief with respect to two state court cases in the Dayton Municipal Court: *State v. Boykins*, Case No. 2009 TRD 011748, and *State v. Boykins*, Case No. 2011 TRT 003135.

In the 2009 case, Boykins was convicted on his plea of guilty of driving without a valid license on June 26, 2009. He was fined \$125 plus court costs and companion charges of driving under suspension, failure to reinstate driver's license, and improper display of license plates were dismissed. When Boykins failed to pay the fine and costs in accordance with the agreed payment plan, a warrant was issued and sent to the Bureau of Motor Vehicles to block issuance of a new license.

In the 2011 case, Boykins was charged with driving without a seatbelt. He failed to appear for initial appearance and a capias warrant was issued for his arrest on March 18, 2011.

Boykins asserts that he should receive jail time credit for time served regarding these two

cases because he was house “at the county detention for nearly a year, which Montgomery County refused to arrest him for these offenses.” (Petition, Doc. No. 2, PageID 18.) He requests “time served for nearly a year that can and should be credited for those offenses which he is now serving a five (5) year sentence.” *Id.* As relief he requests that the warrants or detainers in those two cases be dismissed.

Petitioner is in the custody of Respondent, the Warden of the Federal Correctional Center at Petersburg, Virginia, as the result of a Judgment and Commitment Order of this Court in Case No. 3:12-cr-121. Boykins is serving a sixty-month sentence upon his conviction on a plea of guilty to one count of conspiracy to possess with intent to distribute heroin (Doc. No. 78 in 3:12-cr-121).

Boykins understandably sued his current custodian, Warden Wilson. However, 28 U.S.C. § 2241 only gives District Judges authority to issue the writ “within their respective jurisdictions.” This Court therefore does not have authority to issue the writ to Warden Wilson. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

The proper respondent within this judicial district would be the Dayton Municipal Court, the court in which both of the referenced cases against Mr. Boykins were filed. See *Braden v. 30<sup>th</sup> Judicial Circuit Court*, 410 U.S. 484 (1973). This Court has jurisdiction under 28 U.S.C. § 2241 to issue the writ to the Dayton Municipal Court.

Rather than dismiss the case for lack of jurisdiction over the Respondent, the Magistrate Judge proposed to substitute the Dayton Municipal Court as Respondent and contacted City of Dayton Chief Prosecutor Stephanie Cook to determine if she would object on behalf of the Court to the substitution. Rather than proceed in that manner, Prosecutor Cook obtained from the Dayton Municipal Court dismissals of both of those cases. Certified copies of the disposition

entries, signed by Senior Magistrate Collette Moorman, are attached. The seatbelt charge was withdrawn at the request of the Prosecutor (“WDROP” in the dismissal entry) because of Boykins’ present confinement. In the no driver’s license case, the case was terminated for time served and the balance of fines and costs suspended.

By virtue of the dismissals, there is no longer any process outstanding from the Dayton Municipal Court which can act as a detainer on Petitioner. While this case is not technically moot because there was still a warrant outstanding in 2011 traffic case when this case was filed, Petitioner has now received all the relief he sought<sup>1</sup>.

As a formal matter, it is respectfully recommended that the Petition be dismissed without prejudice for lack of personal jurisdiction of the Respondent. Because reasonable jurists would not disagree with this conclusion, Petitioner should be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous.

August 7, 2014.

s/ *Michael R. Merz*  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ.

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<sup>1</sup> To the extent the Petition can be read as seeking jail time credit against his federal sentence for time spent in jail, Boykins is not entitled to such credit based on the Dayton Municipal Court cases. Boykins was ordered detained in his federal criminal case by Magistrate Judge Michael Newman on September 28, 2012. Whether Boykins is entitled to jail time credit based on the detention order is not before this Court in the present case and must be presented first to the Bureau of Prisons.

P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).

Copies:       The Honorable Collette Moorman  
                  City Prosecutor Stephanie Cook  
                  Warden Eric Wilson





DAYTON MUNICIPAL COURT

ENTRY

CASE NO: 09TRD11748 DEFENDANT: LEO BOYKINS III

8-7-14

Case terminated for  
time served - In prison  
suspend fines  
+ costs DM

8-7, 2014  
I hereby certify the foregoing to be a true and  
correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT  
Mark E. Owens, Clerk of Court  
By Austin Steep Deputy



## REPORT OF ACTION ON CASE

DATE OF ARREST

Month / Day / Year

Time

Am/PM

## COURT ACTION

- ☐ GUILTY ☐ RELEASED TO OTHER AUTHORITY
- ☐ NOT GUILTY ☐

## OFFICER'S NOTES

Radar # Cal. Times

Laser # Cal. Times

A/V Record #

Owner of Veh.

Owner's Add.

Employer

Employer's Add.

Occupation

## OFFICER'S SUPPLEMENTAL COMMENTS

Direction NB

On Brooklyn

Apprehended at

644 Brooklyn

driver Sterling Grovel didn't stop at stop sign NB Brooklyn / Onkridge, then made right turn Brooklyn Hoover.

No seatbelt

passenger car sent Malcolm Owens

No ID

## WITNESSES:

Name Address Telephone

Name Address Telephone

VIOLATION:

SCALE LOCATION

AMOUNT OF OVERLOAD

OVERLOADED ON: ☐ Single Axle☐ Tandem ☐ Inner Bridge

DOT #

PUCC #

Permit Holder or Company Name or Vehicle Owner Name

Street Address

City

State

Zip

ARREST NOTIFICATION

R.C. SECTION

☐ PLATFORM ☐ PORTABLE

I hereby certify the foregoing to be a true and correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT  
Mark E. Owens, Clerk of Court  
By *[Signature]* Deputy

STATE OF OHIO MONTGOMERY COUNTY CITY OF DAYTON

IN THE MONTGOMERY COUNTY JUVENILE COURT

CASE NO.

GRANT CODE

11T 3135

NAME

Leo A. Boykins III

STREET

826 Huron Av

CITY, STATE

Dayton, OH

ZIP 45417

OPERATOR LICENSE/STATE I.D. #		None*		BIRTH DATE		ISSUE DATE		STATE	
SK 364 976				090982		Expired		OH	
CLASS		EXPIRES		ENDORSEMENT(S)/RESTRICTION(S)		SS # (last 4 digits)			
				<input type="checkbox"/> CDL <input type="checkbox"/> MC <input type="checkbox"/> Other		5 5 2 7			
SEX	HEIGHT	WEIGHT	EYES	HAIR	RACE	FINANCIAL RESPONSIBILITY PROOF?			
M	6'1"	275	BRO	BLK	B	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

\* If no OL/State ID: REQUIRED documentation attached:

TO DEFENDANT: COMPLAINT ON Mar 1, 2011 AT 0225 A.M., YOU

Operated Passenger/Parked/Walked a ☐ Passenger ☐ Motorcycle ☐ Bicycle ☐ Other☐ Commercial DOT # ☐ ≥26,001 lbs ☐ <16 Pass. Bus ☐ ≥16 Pass. Bus ☐ Haz. Mat

VEHICLE: YEAR 2011 MAKE cadillac MODEL STS

COLOR silver LICENSE # 717 L6H STATE Ky

UPON A PUBLIC HIGHWAY, NAMELY Brooklyn (M.P.)

AT/NEAR Hoover (M.P.)

IN THE CITY OF DAYTON, IN MONTGOMERY COUNTY (No. 57) AND THE STATE OF OHIO, AND COMMITTED THE FOLLOWING OFFENSE:

<input type="checkbox"/> SPEED: MPH in MPH zone	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Over limits <input type="checkbox"/> Unsafe for conditions <input type="checkbox"/> ACDA	
<input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	
<input type="checkbox"/> OVI: <input type="checkbox"/> Under the influence of alcohol/drug of abuse, <input type="checkbox"/> Prohibited blood alcohol concentration, BAC <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
Prior OVIs: # of prior OVIs Years of prior OVIs	
<input type="checkbox"/> DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Not on person <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
EXPIRED: <input type="checkbox"/> < 6 months <input type="checkbox"/> > 6 months <input type="checkbox"/> Failure to Reinstate	
Suspension Type	
<input type="checkbox"/> SAFETY BELT: Failure to wear <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint <input type="checkbox"/> Booster Seat	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
OTHER OFFENSE	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
OTHER OFFENSE	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
DRIVER LICENSE HELD VEHICLE SEIZED JUVENILE OFFENDER	
PAVEMENT: <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Ice # of Lanes <input type="checkbox"/> Construction Zone	
VISIBILITY: <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input type="checkbox"/> Night <input type="checkbox"/> Dawn	
WEATHER: <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> No Adverse	
TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Light <input type="checkbox"/> None	
AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School	
CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Non-Injury <input type="checkbox"/> Injury <input type="checkbox"/> Fatal	
Crash Report Number:	
REMARKS:	
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TOTAL # OFFENSES: 1	

## SUMMONS TO DEFENDANT

- You are summoned and ordered to appear at the  
☒ Dayton Municipal Court, Traffic Violations Bureau, 301 W. Third St., Dayton, Ohio 45402 at 8:30 a.m.  
☐ Montgomery County Juvenile Court, 380 W. 2nd Street, Dayton, Ohio 45422 at 5:30 p.m.

COURT DATE/LAST DAY TO PAY	
7/8	11 20 11
MONTH	DAY

If you fail to appear or fail to make proper disposition or payment of this ticket on or before the date shown, you may be arrested. See reverse side for additional important information.  
 This summons served Personally on the defendant on Mar 1, 2011  
 The issuing-charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.

5720	25274	310
Court Code	PDA	ASN

Issue-Charging Law Enforcement Officer (signature)

Jerry Bew

Issue-Charging Law Enforcement Officer (printed)

Rev. 03/10

NOTE: ISSUING OFFICER BE SURE TO VERIFY ADDRESS. IF DIFFERENT FROM LICENSE ADDRESS WRITE PRESENT ADDRESS IN SPACE PROVIDED

COURT RECORD



## JUVENILE COMPLAINT

ALIAS	MARRIED	AGE
SCHOOL	GRADE	
EMPLOYER	ADDRESS	
OWNER OF CAR	ADDRESS	
NO. OF OCCUPANTS	<input type="checkbox"/> WITH OWNER CONSENT	<input type="checkbox"/> WITHOUT CONSENT
NAME OF FATHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED
ADDRESS		
NAME OF MOTHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED
ADDRESS		
Marital Status of Parents	<input type="checkbox"/> DIVORCED	<input type="checkbox"/> OTHER SEPARATION
	<input type="checkbox"/> LEGAL SEPARATION	<input type="checkbox"/> RE-MARRIED
GUARDIAN	PHONE NO.	
ADDRESS		
Issuing Officer(s)	Assigned to (Unit)	
RELEASED OR PLACE OF DETENTION		
IMPORTANT: HAVE PARENTS OR GUARDIAN BEEN NOTIFIED THAT JUVENILE IS BEING DETAINED?	YES	NO

## STATEMENT OF FACTS CONCERNING THE COMPLAINT

JUVENILE COMPLAINT

Case No.

Cont'd	NG	G	No Contest
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**CAPIAS ISSUED**

MAR 18 2011

**RET/REC: 8-7-2014**

*Kevin E. Nichols*  
W.F.O.

8-7-14 W.D.R.P. in federal prison for many years to come - 1-27-17

*CSM*

8-7-14 2014

I hereby certify the foregoing to be a true and correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT  
Mark E. Owens, Clerk of Court  
By *Dustin* Deputy

WARRANT / F.W. / P.D. ORDERED BY

JUDGE

\*\*\*\*\*

ATTORNEY FOR DEFENDANT